IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MRS. JUSTICE K.HEMA

THURSDAY, THE 11TH OCTOBER 2007 / 19TH ASWINA 1929

Crl.MC.No. 148 of 2005()

SC.342/2002 of SESSIONS COURT, KOZHIKOE
LP.36/2003 of JUDL.MAGISTRATE OF FIRST CLASS, PERAMBRA

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PETITIONER(S): ACCUSED:

ASHARAF A.T., S/O. AMMOTTY,
ADAVEEL (HOUSE), KAVIL (P.O), NADUVANNUR.

BY ADV. SRI.P.SANTHARAM

RESPONDENT(S): COMPLAINANT:

STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA.

BY PUBLIC PROSECUTOR SRI.K.G.BHASKAR

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 11/10/2007,THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.HEMA, J.

CRL.M.C.NO.148 OF 2005

Dated this the 11th day of October, 2007

O R D E R

Petitioner is the accused, who was charge sheeted for offences under Sections 448, 354, 323 and 427 read with Section 34 of the Indian Penal Code ('IPC', for short) and Section 3(1)(XI) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. The petitioner did not appear before the Judicial Magistrate of First Class, where the case was pending and the case against him was split. The first and third accused alone faced trial.

2. The present petition is filed to quash the proceedings in L.P.No.36 of 2003 on the file of the Judicial First Class Magistrate Court “in the interest of justice”. Needless to say that the proceedings were initiated and the case was transferred to the register of long pending cases only because accused is absconded. According to learned counsel for petitioner, the case against co-accused entered in an acquittal, since the eye witnesses and the alleged victim turned hostile to prosecution and denied the involvement of the accused. The judgment in the said case is

Annexure-3. The depositions of the relevant witnesses are also produced.

3. It is strongly contended that the witnesses having denied the acquaintance of accused or having seen the incident, no purpose will be served, if trial is continued against petitioner. The defacto complainant herself stated that no accused had done anything against her. Even first informant gave evidence that he had not given any complaint to the police. In such circumstances, the petitioner seeks to quash the proceedings in L.P.No.36 of 2003.

4. In the decision of the Full Bench of this Court reported in **Moosa v. Sub Inspector of Police** [2006(1) KLT 552(F.B.)] it has been held that the powers under Section 482 have to be exercised only in rare and exceptional cases in which co-accused are acquitted. This court held that in cases in which accused flee from justice, having absconded, without sufficient reason etc. the court may refuse to invoke Section 482 Cr.P.C. On going through the dictum laid down in the decision cited above, it is clear that this court must be slow to invoke Section 482 Cr.P.C unless there are compelling reasons to do so.

5. No records or documents are produced to explain under

what circumstances accused absconded and proceedings were initiated against him under Sections 82 and 83 Cr.P.C. No sufficient cause is shown by petitioner for not standing trial. In the above circumstances, in the light of the dictum laid down in the decision cited above, I am most reluctant to quash the proceedings as prayed for.

6. Learned counsel for the petitioner submitted that an opportunity may be given to him to seek a discharge. Whether an opportunity is given or not by this court, petitioner has a right to seek his remedies, in accordance with law. It is made clear that this order will not stand in the way of the petitioner seeking appropriate remedy in accordance with law.

With these observations, this petition is dismissed.

K.HEMA, JUDGE

vgs.